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7
8 **BEFORE THE**
BOARD OF REGISTERED NURSING
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. *2013-931*

11 **RON FREDERICK GUSTAFSON AKA**
12 **RONALD FREDERICK GUSTAFSON**
13 **1120 Flora Road**
Arroyo Grande, CA 93420

A C C U S A T I O N

14 **Registered Nurse License No. 749596**

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

19 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
20 official capacity as the Executive Officer of the Board of Registered Nursing, Department of
21 Consumer Affairs.

22 2. On or about April 24, 2009, the Board of Registered Nursing issued Registered Nurse
23 License Number 749596 to Ron Frederick Gustafson (Respondent). The Registered Nurse
24 License was in full force and effect at all times relevant to the charges brought herein and expired
25 on November 30, 2012.

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JURISDICTION

3. This Accusation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 118, subdivision (b) of the Code states:

“The suspension, expiration, or forfeiture by operation of law of a license issued by a board in the department, or its suspension, forfeiture, or cancellation by order of the board or by order of a court of law, or its surrender without the written consent of the board, shall not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the licensee on any such ground.”

5. Section 490 of the Code states:

“(a) In addition to any other action that a board is permitted to take against a licensee, a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

“(c) A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.”

6. Section 493 of the Code states:

“Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to ... to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has

1 been convicted of a crime substantially related to the qualifications, functions, and duties of the
2 licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact
3 that the conviction occurred, but only of that fact, and the board may inquire into the
4 circumstances surrounding the commission of the crime in order to fix the degree of discipline or
5 to determine if the conviction is substantially related to the qualifications, functions, and duties of
6 the licensee in question.”

7 8 **STATUTORY PROVISIONS**

9 7. Section 2761 of the Code states:

10 “The board may take disciplinary action against a certified or licensed nurse or deny an
11 application for a certificate or license for any of the following:

12 (a) Unprofessional conduct, which includes, but is not limited to, the following:

13 (1) Incompetence, or gross negligence in carrying out usual certified or licensed nursing
14 functions.

15 ...

16 (f) Conviction of a felony or of any offense substantially related to the qualifications,
17 functions, and duties of a registered nurse, in which event the record of the conviction shall be
18 conclusive evidence thereof.”

19 8. Section 2761 of the Code provides in pertinent part:

20 “The board may take disciplinary action against a certified or licensed nurse or deny an
21 application for a certificate or license for any of the following:

22 (a) Unprofessional conduct, which includes, but is not limited to, the following:

23 ...

24 (4) Denial of licensure, revocation, suspension, restriction, or any other disciplinary action
25 against a health care professional license or certificate by another state or territory of the United
26 States, by any other government agency, or by another California health care professional
27 licensing board. A certified copy of the decision or judgment shall be conclusive evidence of that
28 action.

9. Section 2762 of the Code states:

“In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do any of the following:

(a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed physician and surgeon, dentist, or podiatrist administer to himself or herself, or furnish or administer to another, any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as defined in Section 4022.

(b) Use any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public or to the extent that such use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license.

(c) Be convicted of a criminal offense involving the prescription, consumption, or self-administration of any of the substances described in subdivision (a) and (b) of this section, or the possession of, or falsification of a record pertaining to, the substances described in subdivision (a) of this section, in which event the record of the conviction is conclusive evidence thereof.

...

(e) Falsify, or make grossly incorrect, grossly inconsistent, or unintelligible entries in any hospital, patient, or other record pertaining to the substances described in subdivision (a) of this section.”

REGULATORY PROVISIONS

10. California Code of Regulations, title 16, section 1442, states:

“As used in Section 2761 of the code, ‘gross negligence’ includes an extreme departure from the standard of care which, under similar circumstances, would have ordinarily been exercised by a competent registered nurse. Such an extreme departure means the repeated failure

1 to provide nursing care as required or failure to provide care or to exercise ordinary precaution in
2 a single situation which the nurse knew, or should have known, could have jeopardized the
3 client's health or life.”

4 11. California Code of Regulations, title 16, section 1443, states:

5 “As used in Section 2761 of the code, ‘incompetence’ means the lack of possession of or
6 the failure to exercise that degree of learning, skill, care and experience ordinarily possessed and
7 exercised by a competent registered nurse”

8 12. California Code of Regulations, title 16, section 1443.5 states:

9 “A registered nurse shall be considered to be competent when he/she consistently
10 demonstrates the ability to transfer scientific knowledge from social, biological and physical
11 sciences in applying the nursing process”

12 COST RECOVERY

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14 13. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
15 administrative law judge to direct a licentiate found to have committed a violation or violations of
16 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
17 ~~enforcement of the case, with failure of the licentiate to comply subjecting the license to not being~~
18 ~~renewed or reinstated.~~

19 DRUG DEFINITIONS

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21 14. Fentanyl, trade name Sublimaze, is a Schedule II controlled substance pursuant to
22 Health and Safety Code section 11055, subdivision (c)(8) and a dangerous drug per Business and
23 Professions Code section 4022. Fentanyl is for the management of persistent moderate to severe
24 chronic pain.

25 15. Midazolam, trade name Versed, is a Schedule IV controlled substance pursuant to
26 Health and Safety Code section 11057(d)(21) and a dangerous drug per Business and Professions
27 Code section 4022.
28

1 16. Oxycodone, trade name Oxycontin, is a Schedule II controlled substance pursuant
2 to Health and Safety Code section 11055(b)(1)(M) and a dangerous drug per Business and
3 Professions Code section 4022.

4 17. Ativan, trade name for Lorazepam, is a Schedule IV controlled substance pursuant
5 to Health and Safety Code section 11057(d)(16) and a dangerous drug per Business and
6 Professions Code section 4022.
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9 **BACKGROUND FACTS**

10 **Doctors Medical Center**

11 18. During the time period between 6/25/10 – 6/29/10 (relevant time period), Respondent
12 was employed as a registered nurse at Doctors Medical Center (DMC), located in San Pablo,
13 California.

14 19. During the relevant time period pertaining to the allegations herein, DMC used a drug
15 dispensing unit called Omnicell¹.

16 20. During the relevant time period, Respondent was observed inappropriately removing
17 controlled substances on several occasions while on duty.

18 21. On or around 7/26/10, Respondent was terminated after investigation and review of
19 medical records and Omnicell activities revealed discrepancies in Respondent's administration of
20 medication as set forth below relating to K.D. and J.W.²:

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26 ¹ Omnicell is an automated device designed to control the dispensing of controlled medications in a facility where
27 multiple users have access to the medications. Omnicell provides perpetual inventory management and an automated
28 audit trail.

² Patient's initials are used in order to protect confidentiality.

PATIENT K.D.

Physician Orders	Date/Time Removed from Omnicell	Medication & Amount	Medication Admin. and/or Progress Notes	Discrepancies
6/24/10 – 7/1/10 Fentanyl Drip 1250 mcg IV Titrate 25 mcg Q 30 min	6/25/10 2:16 a.m.	Fentanyl 1250 mcg/250 ml 1 bag	Not documented	Not documented as administered or wasted.
	6/26/10 2:25 a.m.	Fentanyl 1250 mcg/250 ml 1 bag	Not documented	Not documented as administered or wasted.
	6/27/10 3:47 a.m.	Fentanyl 1250 mcg/250 ml 1 bag	Not documented	Not documented as administered or wasted.

Summary: During the relevant time period, Respondent accessed DMC's Omnicell unit three times and removed Fentanyl 1250 mcg/250 ml without indicating in K.D.'s medical records that the narcotic was administered or wasted.

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PATIENT J.W.

Physician Orders	Date/Time Removed from Omnicell	Medication & Amount	Medication Admin. and/or Progress Notes	Discrepancies
6/19/10 – 6/28/10 Fentanyl Drip 1250 mcg IV Titrate 25 mcg Q 30 min	6/25/10 7:07 a.m.	Fentanyl 1250 mcg/250 ml 1 bag	Not documented	Not documented as administered or wasted.
	6/26/10 12:00 a.m.	Fentanyl 1250 mcg/250 ml 1 bag	Not documented	Not documented as administered or wasted.
	6/26/10 7:16 a.m.	Fentanyl 1250 mcg/250 ml 1 bag	6/26/10 1:30 a.m.	Documented as administered by a different nurse
	6/26/10 11:21 p.m.	Fentanyl 1250 mcg/250 ml 1 bag	Not documented	Not documented as administered or wasted.
	6/27/10 3:47 a.m.	Fentanyl 1250 mcg/250 ml 1 bag	Not documented	Not documented as administered or wasted.
	6/28/10 7:09 a.m.	Fentanyl 1250 mcg/250 ml 1 bag	Not documented	Not documented as administered or wasted.

Summary: During the relevant time period, Respondent accessed DMC's Omnicell unit five times and removed Fentanyl 1250 mcg/250 ml without indicating in J.W.'s medical records that the narcotic was administered or wasted. Moreover, the doses removed on 6/26/10 at 12:00 a.m. and 7:16 a.m. greatly exceeded the physician's order. The doses removed on 6/26/10 at 11:21 p.m. and 6/27/10 at 3:47 a.m. also greatly exceeded the physician's order.

22. A total of 10,000 mcg of Fentanyl was unaccounted for, which includes Defendant's failure to document that the narcotic was administered or wasted on patient medical records.

23. On or around 6/28/10, Respondent refused to submit to a urine test when requested but admitted that he diverted Fentanyl while working at DMC.

Sierra Vista Regional Medical Center

24. During the time period between 1/14/10 – 1/19/10 (relevant time period), Respondent was employed as a registered nurse in the Cardiovascular Intensive Care Unit (ICU) at Sierra Vista Regional Medical Center (SVR), located in San Luis Obispo.

25. During the relevant time period pertaining to the allegations herein, SVR used a drug dispensing unit called Pyxis³.

26. During the relevant time period, Respondent was observed inappropriately removing controlled substances while on duty.

27. On or around 1/18/10, Respondent was placed on administrative leave after investigation and review of medical records and Pyxis activities revealed discrepancies in Respondent's administration of medication as set forth below relating to Patient A.

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³ Pyxis is an automated device designed to control the dispensing of controlled medications in a facility where multiple users have access to the medications. In addition, the device creates a record of who accessed the device, date and time of each access, the patient for whom the medications were withdrawn and the name and amount of the medications. Access to the device requires the user to provide a code name and personal identification number (PIN) or is completed by a biometric interrogation device.

PATIENT A

Physician Orders	Date/Time Removed from Pyxis	Medication & Amount	Medication Admin. and/or Progress Notes	Discrepancies
1/17/10 Fentanyl 50 mcg/ 2 ml IV Q 30 min prn for pain 5:55 a.m.	1/18/10 8:53 a.m.	Fentanyl 100 mcg/2 ml 1 vial	Not documented	Not documented as administered or wasted.
1/17/10 Versed 2 mg IV Q 30 min prn to sedate 5:53 a.m.	1/18/10 9:19 a.m.	Versed 2 mg/1 vial	Not documented	Not documented as administered or wasted.
Versed 3 mg IV Q 30 min prn to sedate 5:53 a.m.				
Versed 4 mg IV Q 30 min prn to sedate 5:54 a.m.				
	1/18/10 9:59 a.m.	Fentanyl 100 mcg/2 ml 1 vial	Not documented	Not documented as administered or wasted.
	1/18/10 11:07 a.m.	Fentanyl 100 mcg/2 ml 1 vial	Not documented	Not documented as administered or wasted.
	1/18/10 11:07 a.m.	Versed 6 mg/3 vials	Not documented	Not documented as administered or wasted.
	1/18/10 12:31 a.m.	Fentanyl 100 mcg/2 ml 1 vial	Not documented	Not documented as administered or wasted.
	1/18/10 12:31 p.m.	Versed 6 mg/3 vials	Not documented	Not documented as administered or wasted.
	1/18/10 2:04 a.m.	Fentanyl 100 mcg/2 ml 1 vial	Not documented	Not documented as administered or wasted.
	1/18/10 2:04 p.m.	Versed 6 mg/3 vials	Not documented	Not documented as administered

Summary: During the relevant time period, Respondent accessed SVR Pyxis unit four times and removed Versed 20 mg/10 vials and Fentanyl 500 mcg/10 ml/5 vials without indicating in Patient A's medical records that the narcotic was administered or wasted.

28. On or around 1/18/10, Respondent left two empty vials of Versed in the ICU bathroom along with two alcohol wipes and a syringe with blood on the needle.

29. When confronted, Respondent locked himself in the ICU bathroom, but agreed to speak with the Critical Care Unit Director, through the door.

30. When exiting the bathroom, Respondent appeared to have "red bloodshot eyes, slurred speech and an unsteady gait."

31. Respondent later admitted that he diverted Patient A's Versed and administered it to himself while on duty.

Anaheim Memorial Medical Center

32. During the time period between 4/13/09 – 5/9/09, Respondent was employed as a Registry Nurse in the ICU for Anaheim Memorial Medical Center (AMMC).

33. On or around 5/9/09, M.R., ICU Registered Nurse, observed that Respondent was "going in and out" of his assigned patient room but failed to clear the ventilator alarm which was sounding.

34. M.R. entered patient's room and observed that the patient's ventilator was disconnected.

35. M.R. observed that Respondent exhibited "strange and aloof" behavior: he appeared "very agitated" and "a little off with his speech."

36. M.K., ICU Manager, located "numerous used syringes, a butterfly needle, and alcohol wipes in a toilet bowl in an employee bathroom during Respondent's shift.

37. When confronted, Respondent appeared to be in an "unsteady on his feet, had blood

1 on the sleeves of his jacket, and he appeared altered.”

2 38. Respondent also had “fresh track marks” on his left arm.

3 39. Respondent agreed to submit to a urine drug screen, the results for which were
4 positive for Benzodiazepine (Ativan).

5 40. On or around the early morning of 5/10/09, Respondent was sent home and
6 subsequently identified as a “do not return.”

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8 **FIRST CAUSE FOR DISCIPLINE**

9 **(Gross Negligence)**

10 41. Respondent is subject to discipline under Code section 2761, subdivision (a)(1) on the
11 grounds of unprofessional conduct as defined under California Code of Regulations, title 16,
12 section 1442, in that Respondent committed acts constituting gross negligence. Complainant
13 incorporates by reference paragraphs 18 – 40 as if fully set forth herein.
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16 **SECOND CAUSE FOR DISCIPLINE**

17 **(Incompetence)**

18 42. Respondent is subject to discipline under Code section 2761, subdivision (a)(1) on the
19 grounds of unprofessional conduct as defined under California Code of Regulations, title 16,
20 sections 1443 and 1443.5, in that Respondent committed acts constituting incompetence.
21 Complainant incorporates by reference paragraphs 18 – 40 as if fully set forth herein.
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23 **THIRD CAUSE FOR DISCIPLINE**

24 **(Conviction of Substantially Related Crime)**

25 43. Respondent is subject to disciplinary action under section 490 and 2761, subdivision
26 (f), in conjunction with California Code of Regulations, title 16, section 1444, in that Respondent
27 was convicted of a crime substantially related to the functions or duties of a registered nurse
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1 which to a substantial degree evidence his present or potential unfitness as a registered nurse to
2 practice a manner consistent with the public health, safety, or welfare. The circumstances are as
3 follows:

4 a. On or around October 17, 2011, after pleading nolo contendere, Respondent was
5 convicted of violating Health and Safety Code § 11153, subdivision (a) [unlawful issuance of a
6 prescription for a controlled substance], a felony, in *The People of the State of California v.*
7 *Ronald Frederick Gustafson*, San Luis Obispo County Superior Court, Case No. F000460892
8 (2011). Respondent was given three (3) years of probation with terms and conditions including
9 fines and fees and completing a one year residential treatment program approved by the probation
10 officer.

11 b. The circumstances are that on or around 1/18/10, while employed at Sierra Vista
12 Regional Medical, Respondent willfully and unlawfully issued a prescription for Versed
13 (Midazolam), a controlled substance. Respondent was arrested and charged with possession of a
14 controlled substance in violation of Health and Safety Code § 11377, subdivision (a), a felony and
15 embezzlement in violation of Penal Code § 484, subdivision (a), a misdemeanor.

16 **FOURTH CAUSE FOR DISCIPLINE**

17 **(Obtaining Controlled Substances)**

18 44. Respondent is subject to discipline under Code section 2762, subdivision (a) on the
19 grounds of unprofessional conduct relating to controlled substances or dangerous drugs and as
20 defined in the relevant Health and Safety and Business and Professions code. Complainant
21 incorporates by reference paragraphs 18 – 40, 43 and all subparagraphs as if fully set forth herein.
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FIFTH CAUSE FOR DISCIPLINE

(Dangerous Use of Controlled Substances)

45. Respondent is subject to discipline under Code section 2762, subdivision (b) in that Respondent used controlled substances or dangerous drugs, to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public. Complainant incorporates by reference paragraphs 18 – 40, 43 and all subparagraphs as if fully set forth herein.

SIXTH CAUSE FOR DISCIPLINE

(Criminal Conviction Involving Controlled Substances)

46. Respondent is subject to discipline under Code section 2762, subdivision (c) in that Respondent was convicted of a criminal offense involving controlled substances. Complainant incorporates by reference paragraphs 18 – 40, 43 and all subparagraphs as if fully set forth herein.

SEVENTH CAUSE FOR DISCIPLINE

(Making Grossly Incorrect and Inconsistent Entries in Medical Records)

47. Respondent is subject to discipline under Code section 2762, subdivision (e) on the grounds of unprofessional conduct relating to controlled substances or dangerous drugs in that Respondent made grossly incorrect and inconsistent entries into medical records and other patient records. Complainant incorporates by reference paragraphs 18 – 31 as if fully set forth herein.

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2 **EIGHTH CAUSE FOR DISCIPLINE**

3 **(Unprofessional Conduct)**

4 48. Respondent is subject to discipline under Code section 2761, subdivision (a) in that
5 Respondent committed acts constituting unprofessional conduct. Complainant incorporates by
6 reference paragraphs 18 – 40, 43 and all subparagraphs as if fully set forth herein.
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9 **NINTH CAUSE FOR DISCIPLINE**

10 **(Disciplinary Action by Other State)**

11 49. Respondent is subject to disciplinary action under section 2761, subdivision (a)(4) of
12 the Code in that disciplinary action was taken against Respondent's Registered Nurse License by
13 The Missouri State Board of Nursing (Missouri Board).

14 50. On or around 2/28/00, Respondent was issued Registered Nurse License No.
15 2000149148 by the State of Missouri which expired on or about April 30, 2011.

16 51. During the time period roughly between 9/7/05 – 8/28/08, Respondent was employed
17 as a Registered Nurse at Saint Anthony's Medical Center, located in St. Louis, Missouri.

18 52. On or around 8/18/08, Respondent was observed withdrawing multiple doses of
19 morphine without proper cause.

20 53. During the course of an investigation, the Respondent was requested to submit to a
21 drug screen, the results of which were positive for morphine.

22 54. Respondent was terminated on 8/28/08.

23 55. A complaint filed with the Administrative Hearing Commission of the State of
24 Missouri sought discipline against Respondent's registered nursing license relating to the facts
25 and circumstances in that matter.

26 56. Respondent's Missouri Registered Nurse license was revoked on or around 9/20/11.
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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

1. Revoking or suspending Registered Nurse License Number 749596, issued to Ron Frederick Gustafson;

2. Ordering Ron Frederick Gustafson to pay the Board of Registered Nursing the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

3. Taking such other and further action as deemed necessary and proper.

DATED: April 18, 2013

Louise Bailey
LOUISE R. BAILEY, M.ED., RN
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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FILED

SEP 14 2011

SAN LUIS OBISPO SUPERIOR COURT

BY Sandra Cardwell
Sandra Cardwell, Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN LUIS OBISPO

THE PEOPLE OF THE STATE OF
CALIFORNIA,

PLAINTIFF,

v.

RONALD FREDERICK GUSTAFSON

1120 Flora Rd.
Arroyo Grande, CA 93420

Registered Nurse License No. 749596

DEFENDANT.

LOUISE R. BAILEY, M.ED., RN,
EXECUTIVE OFFICER,
BOARD OF REGISTERED NURSING,

DEPARTMENT OF CONSUMER AFFAIRS,
STATE OF CALIFORNIA

Case No. F460892

[PROPOSED] ORDER

RE: RESTRICTIONS ON PRACTICE AS
A REGISTERED NURSE

[Penal Code § 23]

DATE: September 14, 2011

TIME: 8:30 a.m.

DEPARTMENT: 1

The court having noted the appearance of Deputy Attorney General Langston M. Edwards,
on behalf of the Board of Registered Nursing; having read and considered the moving papers, oral
and written arguments; and having heard and considered any objections on behalf of Defendant
Ronald Frederick Gustafson, finds good cause supports the application of the Board pursuant to

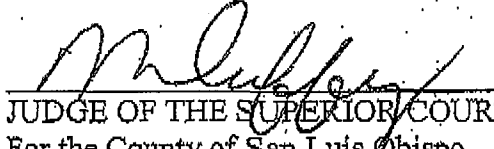
1 Penal Code section 23 and that under the current circumstances it is appropriate to impose
2 reasonable restrictions on Defendant in the interest of public safety.

3 THE COURT HEREBY ORDERS THAT:

4 1. Defendant Ronald Frederick Gustafson is prohibited from engaging, either
5 directly or indirectly, in any activity for which a registered nurse license is required. (Such acts
6 as defined by Business and Professions Code section 2725).

7 2. These conditions shall remain in effect until further order by the court, with
8 notice to the Board of Registered Nursing.

9 Dated: September 14, 2011.


10 JUDGE OF THE SUPERIOR COURT
11 For the County of San Luis Obispo